

Answer: Yes, leave should be granted and Plaintiffs should be allowed to file their First Amended Complaint and join Carrington Foreclosure Services, LLC as a defendant.

Argument and Authorities

A. Leave Should be Granted to File Plaintiffs' First Amended Complaint.

The Federal Rules governing amendments before trial states that leave to amend a pleading is to be freely given when justice so requires, and this mandate is to be heeded. *Foman v. Davis*, 371 U.S. 178, 83 S. Ct. 227 (1962) (citing FED. R. CIV. P. 15). In general, permission to amend is liberally granted where there is no prejudice. *Eastern Food Services, Inc. v. Pontifical Catholic University Services Ass'n, Inc.*, 357 F.3d 1 (1st Cir. 2004). Four factors are relevant to good cause: (1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.” *Sw. Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003).

The amendment is important because Plaintiff seeks to allege claims and theories of recovery not alleged in the original state court petition. Further, upon new information obtained by Plaintiff's counsel, the original theories of recovery no longer apply. Also, federal pleading standards require more specific allegations versus the notice pleading standards of Texas state courts. Plaintiff should be allowed to plead all theories of recovery at this very early stage of the case.

Defendants cannot be said to be prejudiced by the First Amended Complaint. Trial is currently scheduled for December 9, 2024 and there are no outstanding discovery requests. Also, if there is prejudice, it may be easily cured with a continuance.

The Court granting this motion for leave to amend will not cause an undue delay in the proceedings. This amended complaint is not made in bad faith because of a dilatory motive on the

part of the Plaintiff, nor do the circumstances reveal a repeated failure to cure deficiencies by amendments previously allowed or undue prejudice to the opposing party by virtue of allowance of the amendment. The proposed “First Amended Complaint” is attached to this Motion as Exhibit 1.

B. Leave Should be Granted to Join Carrington Foreclosure Services, LLC as a Defendant.

Carrington Foreclosure Services, LLC should be joined as they are a required party under Plaintiffs newly alleged cause of action. As a required party that is not yet a party to this litigation, this court could not accord complete relief without their addition. *See* FED. R. CIV. P. 19(a)(1)(A).

Plaintiffs have newly alleged a theory of recovery whereby the only liable party would be Carrington Foreclosure Services, LLC. Specifically, a violation of TEX. GOV’T. CODE § 83, also known as the unauthorized practice of law statute. The remedy provided for in the statute is return of the fee received, treble damages to Plaintiffs, and all court costs and attorney’s fees. *Id.* at § 83.005. As Carrington Foreclosure Services, LLC is who received the fee, they are the party liable for violation of the statute and they are the party Plaintiff can recover damages from. Carrington Foreclosure Services, LLC is therefore a necessary party and should be joined as a defendant in this case.

Request for Relief

WHEREFORE, Plaintiff respectfully requests that leave be granted for the filing of the “First Amended Complaint” and the joining of Carrington Foreclosure Services, LLC.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that emails were exchanged with Defendants’ counsel, Jessica Riley, on September 1, 2023 regarding Defendants’ position on this motion. Ms. Riley indicated that her client is opposed to this motion and the relief sought herein.

/s/ Charles “Danny” Brooks
CHARLES “DANNY” BROOKS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon all counsel of record via Certified Mail, Return Receipt Requested, Facsimile and/or the Court’s CM/ECF system on September 5, 2023.

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